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Bryan Adair Construction Company, Inc. and Mountain West Regional Council of Carpenters. Case 27–CA–17722

February 19, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On January 29, 2003, the National Labor Relations Board issued an Order¹ that, among other things, ordered the Respondent to (1) make whole Fernando Chavez, Geoffrey Cobb, Theodore Mallish, and Randy Willis for any loss of earnings and other benefits resulting from their discharges in violation of the Act; (2) remove from its files any reference to their unlawful discharges and notify them in writing that this had been done and that the discharges would not be used against them; and (3) post copies of a notice to employees, in English and Spanish, at its facility and, in the event that the Respondent closed that facility, duplicate and mail copies of the notice to current and former employees. On June 3, 2003, the United States Court of Appeals for the Tenth Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatees, on October 24, 2003, the Acting Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and alleging that the Respondent had failed to remove the references to the unlawful discharges from its files and had failed to post or duplicate and mail the required notices to employees. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. The Respondent failed to file an answer.

By letter dated November 24, 2003, the Acting Regional Attorney advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by December 3, 2003, a

motion for default judgment would be filed.³ Nevertheless, the Respondent did not file an answer.

On January 20, 2004, the General Counsel filed with the Board a motion for default judgment, with exhibits attached. On January 23, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.⁴

³ Copies of the compliance specification and the November 24, 2003 letter were sent to the Respondent by certified and regular mail. The copies sent by certified mail were returned to the Regional Office marked "unclaimed." The compliance specification and the November 24, 2003 letter sent by regular mail were not returned. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB No. 36 fn.2 (2003), and cases cited therein. Further, the failure to the Postal Service to return the copy of the compliance specification and letter that were served by regular mail indicates actual receipt of that document. See *Id.*

⁴ As indicated above, the compliance specification alleges that the Respondent had failed to remove the references to the unlawful discharges from its files and had failed to post or duplicate and mail the required notices to employees. By failing to file an answer, the Respondent has effectively admitted that it has failed to do so. Nevertheless, we find it unnecessary in this proceeding to order the Respondent to remove the references to the unlawful discharges from its records

¹ Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Albert A. Metz issued on December 6, 2002 (JD(SF)–95–02).

² 03–9557.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

ORDER

The National Labor Relations Board orders that the Respondent, Bryan Adair Construction Company, Inc., Broken Arrow, Oklahoma, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Fernando Chavez	\$ 4,577.77
Geoffrey Cobb	3,831.74

and to post or duplicate and mail the notices to employees, as those actions are included in our previous Order that has been enforced by the court of appeals. See *Ryder System*, 302 NLRB 608, 610 fn.9 (1991), enfd. 983 F.2d 705 (6th Cir. 1993).

Theodore Mallish	8,191.68
Randy Willis	10,031.52
TOTAL:	\$26,632.71

Dated, Washington, D.C. February 19, 2004

Robert J. Battista,	Chairman
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Peter C. Schaumber,	Member
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Ronald Meisburg,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD